

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2011-074**

REDA DARLENE HEFLIN

APPELLANT

**VS. FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF JUVENILE JUSTICE
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

**** ** ***

The Board at its regular March 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 5, 2013, and having considered Appellant's exceptions, Appellee's response, oral arguments, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this _____ day of March, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Adam Adkins
Reda Darlene Heflin
Joslyn Glover

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*** * * * ***

This matter came on for a pre-hearing conference on January 27, 2012, at 12:00 Noon, at 28 Fountain Place, Frankfort, KY, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment pursuant to the authority found at KRS Chapter 18A.

Appellant Reda Darlene Heflin was present by telephone and not represented by legal counsel. Appellee Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Jamhal Woolridge. Also present on behalf of the Appellee was the Hon. Joslyn Olinger Glover.

The purposes of the pre-hearing conference were to determine the status of the appeal and to schedule this matter for an evidentiary hearing, if appropriate.

Appellee has filed a Motion to Dismiss to which Appellant, by counsel, has filed a Response. The matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, Appellant was a classified employee with status.

2. As was stated in her appeal and also in a pre-hearing conference, Appellant contends she was essentially told an untruth when she was not started at the midpoint salary when she became an Administrative Specialist III, but yet two months later another employee was promoted to the position of Administrative Specialist III (with less work experience and less state service) and started at the midpoint salary. These events occurred in 2007, but Appellant contends she did not become aware of the other employee receiving the midpoint salary until March 2011.

3. Appellee contends that this matter must be dismissed, as the Personnel Board does not have jurisdiction to grant relief, as Appellant has not stated a claim upon which relief may be granted. Appellee cites 101 KAR 2:034, Section 1, which states, "[A]n appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade."

4. Appellee contends that neither Appellant nor Ms. Balentine was a new hire; in fact, both were transfer and promotions, thus, the salary comparison requirements of the regulation would not come into play as they would for a new hire with an employee already in that pay grade. Appellee cites previous Personnel Board cases, which he contends prove this point. Appellee also notes the employees have different work counties (Appellant originally in Warren and then transferring to Butler; Balentine in McCracken).

5. Appellee concludes its argument by noting the regulation is there for a reason, and that if the appeal was allow to go forward, and if it was sustained, it would force a violation of that regulation.

6. Appellant retained counsel, who filed a Response to Appellee's motion. Appellant contends that in 2007 (when she was hired as an Administrative Specialist III) she enquired about the salary and was told essentially that being appointed at a mid-range salary for an Administrative Specialist III position was not available. Appellant later learned that Jessica Balentine had, in fact, been appointed to that same position only a few months after Appellant, and was given the midpoint salary. Counsel admits that Appellant's work county initially Warren County, and that Balentine's work county was McCracken.

7. Counsel also goes on to note that Appellant has a significantly higher workload than when she began in this position due to having been moved to Butler County.

8. Counsel argues that the purpose and intent cited by Appellant and conceded to be controlling here, i.e. 101 KAR 2:034, Section 1, must “ensure uniformity and equity in administration of the pay plan in accordance with the statutory requirements.” Counsel asserts the section has been violated where the Appellant is concerned.

9. Counsel for the Appellant contends that Ms. Balentine resigned, was reappointed, and thus, was a new appointee, and that such occurred subsequent to Appellant having taken the position of Administrative Specialist III earlier in 2007. Counsel contends that Appellant and Balentine are clearly in the same classification, and at least have a similar combination of education and experience. As noted, Appellant does understand that the work counties are different.

10. While noting that “the purpose of the regulation is to ensure uniformity and equity in administration of the pay plan, as indicated in the historical notes of the necessity, function, and conformity of the regulation, there is nothing uniform and equitable of the Appellant making less money than Balentine, wherein the Appellant has been in the position longer, has the same education and work experience, and has had

a far more significant workload. In this particular case, the equity would only exist if in fact the Appellant was making more than Ms. Balentine.”

11. Counsel also contends that KRS 18A.145(3) was violated when Appellant was informed by Kevin Garvin that she was not eligible for the midpoint range salary during the initial interview, which counsel contends was proven false when Ms. Balentine was hired at the mid-range salary only a few months later.

FINDINGS OF FACT

1. During the relevant times, Appellant was a classified employee with status.

2. The Hearing Officer finds, and it is undisputed, that Jessica Balentine was brought in at a salary in 2007 greater than Appellant for the position of Administrative Specialist III.

3. The Hearing Officer finds that Appellant has had different work counties during the relevant times (Appellant first Warren and then Butler; Balentine in McCracken).

4. Though it may well be that Appellant and Ms. Balentine have a similar combination of education and experience and are in the same classification, it is clear they are not in the same work county. The Hearing Officer finds that as Appellant and

Ms. Balentine were not in the same work county, the salary comparison regulation at 101 KAR 2:034, Section 1, has no application.

5. The Hearing Officer finds that salary negotiation discussions between Appellant and Kevin Garvin do not constitute a violation of KRS 18A.145. The Hearing Officer finds that KRS 18A.145(3) does not apply to salary negotiations, but rather has to do with whether a person can be hired at all.

CONCLUSION OF LAW

The Hearing Officer concludes that the regulation at 101 KAR 2:034, Section 1, has no application, and that KRS 18A.145(3) does not have application to the facts as alleged herein. As such, the Personnel Board does not have jurisdiction to grant the relief the Appellant seeks.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **Reda Darlene Heflin v. Justice and Public Safety Cabinet, Department of Juvenile Justice** (Appeal No. 2011-074) be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other

party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of Hearing Officer Boyce A. Crocker this ____ day of May, 2012.

KENTUCKY PERSONNEL BOARD

Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Jamhal Woolridge
Hon. Jeremy Aldridge